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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,  
11 Plaintiff,  
12 vs.  
13 Brian Tackett,  
14 Defendant.

22-CR-0462-TUC-JGZ (LAB)

PLEA AGREEMENT

(Fast Track U.S.S.G. § 5K3.1)

15 The United States of America and the defendant agree to the following disposition:

16 PLEA

17 The defendant agrees to plead guilty to the Indictment charging the defendant with  
18 a violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(ii), 1324(a)(1)(B)(i) and  
19 1324(a)(1)(B)(iii), Conspiracy to Transport Illegal Aliens for Profit Placing in Jeopardy  
20 the Life of Any Person, a felony.

21 ELEMENTS OF THE OFFENSE AND SENTENCING FACTOR

22 1. There was an agreement between two or more persons to commit the offense  
23 of transporting illegal aliens in violation of Title 8, United States Code, Section  
24 1324(a)(1)(A)(ii), that is, there was an agreement that all or some of the co-conspirators,  
25 knowing or in reckless disregard of the fact that aliens had come to, entered, or remained  
26 in the United States in violation of law, would knowingly transport such aliens within the  
27 United States by means of transportation or otherwise, in furtherance of violation of law.

28 2. The defendant became a member of the conspiracy knowing that the object

1 of the conspiracy was the transportation of illegal aliens and the defendant intended to  
2 accomplish said object for the purpose of private financial gain or commercial advantage.

3 3. During and in relation to the offense, the defendant caused serious bodily  
4 injury to or placed in jeopardy the life of, any person.

### 5 STIPULATIONS, TERMS AND AGREEMENTS

#### 6 Maximum Penalties

7 A violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(ii), 1324(a)(1)(B)(i)  
8 and 1324(a)(1)(B)(iii) is punishable by a maximum fine of \$250,000.00, or a maximum  
9 term of imprisonment of twenty (20) years, or both, plus a term of supervised release of  
10 three years and a special assessment of \$100; the special assessment is due and payable at  
11 the time the defendant enters the plea of guilty, and must be paid by the time of sentencing  
12 unless the defendant is indigent. If the defendant is indigent, the special assessment will  
13 be collected according to Title 18, United States Code, Chapters 227 and 229.

14 The defendant will pay upon conviction an additional \$5,000 special assessment  
15 pursuant to 18 U.S.C. § 3014(a), unless the Court determines that the defendant is indigent.

#### 16 Agreements Regarding Sentence

17 1. Guideline Calculations: Although the parties understand that the Guidelines  
18 are only advisory and just one of the factors the Court will consider under 18 U.S.C. §  
19 3553(a) in imposing a sentence, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the parties  
20 stipulate and agree that the below guideline calculations are appropriate for the charge for  
21 which the defendant is pleading guilty:

22 Base Offense Level:	2L1.1(a)(3)	12
23 Number of Aliens:	2L1.1(b)(2)	+3
Risk of Death or Serious Bodily Injury	2L1.1(b)(6)	18
Acceptance of Responsibility:	3E1.1(a)&(b)	-3
24 Early Disposition/Government Savings:	5K3.1/5K2.0	-4
25 Total Adjusted Offense Level:		<u>11</u>

26 2. Sentencing Range: Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the government  
27 and the defendant stipulate and agree that the following are the applicable guideline ranges  
28 for the offense, based on the defendant's criminal history category (CHC):



1 CHC I: a sentencing range of 8-14 months' imprisonment.  
2 CHC II: a sentencing range of 10-16 months' imprisonment.  
3 CHC III: a sentencing range of 12-18 months' imprisonment.  
4 CHC IV: a sentencing range of 18-24 months' imprisonment.  
5 CHC V: a sentencing range of 24-30 months' imprisonment.  
6 CHC VI: a sentencing range of 37-33 months' imprisonment.

7 **This plea agreement is contingent on the successful guilty pleas of all**  
8 **defendants in 22-CR-0462-JGZ (LAB). If any of the co-defendants do not plead guilty**  
9 **in this case, the government reserves the right to withdraw from the plea agreement.**

10 3. The defendant may withdraw from the plea agreement if he/she receives a  
11 sentence that exceeds the stipulated ranges listed above.

12 4. If the defendant moves for any adjustments in Chapters Two, Three or Four of  
13 the Sentencing Guidelines or any "departures" from the Sentencing Guidelines, the  
14 government may withdraw from this agreement. If the defendant argues for a variance  
15 under 18 U.S.C. § 3553(a) in support of a sentence request below the stipulated range in  
16 this agreement, the government may oppose the requested variance. The government,  
17 however, will not withdraw from the agreement if the defendant argues for, and the Court  
18 grants, a variance below the stipulated range in this agreement.

19 5. The parties agree that the defendant was an average participant in the offense for  
20 the purpose of role analysis under U.S.S.G. §§ 3B1.1 and 3B1.2.

21 6. If the Court, after reviewing this plea agreement, concludes any provision is  
22 inappropriate under Fed. R. Crim. P. 11(c)(5), it may reject the plea agreement, giving the  
23 defendant, in accordance with Fed. R. Crim. P. 11(d)(2)(A), an opportunity to withdraw  
24 the defendant's guilty plea.

25 7. The defendant recognizes that pleading guilty may have consequences with  
26 respect to his/her immigration status if defendant is not a citizen of the United States.  
27 Under federal law, a broad range of crimes are removable offenses, including the offense(s)  
28 to which defendant is pleading guilty. Removal and other immigration consequences may  
be the subject of a separate judicial or administrative proceeding, and the defendant has  
discussed the direct and collateral implications this plea agreement may have with his or  
her defense attorney. Defendant nevertheless affirms that he/she wants to plead guilty

1 regardless of any immigration consequences that this plea may entail, even if the  
2 consequence is defendant's automatic removal from the United States.

3 Forfeiture

4 Nothing in this plea agreement shall be construed to protect the defendant from civil  
5 forfeiture proceedings or prohibit the United States from proceeding with and/or initiating  
6 an action for civil forfeiture. Further, this agreement does not preclude the United States  
7 from instituting any civil proceedings as may be appropriate now or in the future.

8 Plea Addendum

9 This written plea agreement, and any written addenda filed as attachments to this  
10 plea agreement, contained all the terms and conditions of the plea. Any additional  
11 agreements, if any such agreements exist, shall be recorded in a separate document and  
12 may be filed with the Court under seal. Accordingly, additional agreements, if any, may  
13 not be in the public record.

14 Waiver of Defenses and Appeal Rights

15 Provided the defendant receives a sentence not to exceed 41 months' imprisonment,  
16 the defendant waives any and all motions, defenses, probable cause determinations, and  
17 objections that the defendant could assert to the information or indictment, or to the petition  
18 to revoke, or to the Court's entry of judgment against the defendant and imposition of  
19 sentence upon the defendant providing the sentence is consistent with this agreement. The  
20 sentence is in accordance with this agreement if the sentence imposed is within the  
21 stipulated range or below the stipulated range if the Court grants a variance. The defendant  
22 further waives: (1) any right to appeal the Court's entry of judgment against defendant; (2)  
23 any right to appeal the imposition of sentence upon defendant under 18 U.S.C. § 3742  
24 (sentence appeals); (3) any right to appeal the district court's refusal to grant a requested  
25 variance; (4) any right to collaterally attack defendant's conviction and sentence under 28  
26 U.S.C. § 2255, or any other collateral attack; and (5) any right to file a motion for  
27 modification of sentence, including under 18 U.S.C. § 3582(c). The defendant  
28 acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack



1 the defendant might file challenging his/her conviction or sentence in this case. If the  
2 defendant files a notice of appeal or a habeas petition, notwithstanding this agreement,  
3 defendant agrees that this case shall, upon motion of the government, be remanded to the  
4 district court to determine whether defendant is in breach of this agreement and, if so, to  
5 permit the government to withdraw from the plea agreement. This waiver shall not be  
6 construed to bar an otherwise-preserved claim of ineffective assistance of counsel or of  
7 "prosecutorial misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-  
8 01 (2015)).

9 Reinstitution of Prosecution

10 Nothing in this agreement shall be construed to protect the defendant in any way  
11 from prosecution for perjury, false declaration or false statement, or any other offense  
12 committed by the defendant after the date of this agreement. In addition, if the defendant  
13 commits any criminal offense between the date of this agreement and the date of  
14 sentencing, the government will have the right to withdraw from this agreement. Any  
15 information, statements, documents and evidence which the defendant provides to the  
16 United States pursuant to this agreement may be used against the defendant in all such  
17 proceedings.

18 If the defendant's guilty plea is rejected, withdrawn, vacated, or reversed by any  
19 court in a later proceeding, the government will be free to prosecute the defendant for all  
20 charges as to which it has knowledge, and any charges that have been dismissed because  
21 of this plea agreement will be automatically reinstated. In such event, the defendant waives  
22 any objections, motions, or defenses based upon the Speedy Trial Act or the Sixth  
23 Amendment to the Constitution as to the delay occasioned by the later proceedings.  
24 Defendant agrees that the stipulated sentencing ranges set forth under "Agreements  
25 Regarding Sentence" will not be offered if prosecution is re-instituted.

26 Disclosure of Information to U.S. Probation Office

27 The defendant understands the government's obligation to provide all information  
28 in its file regarding defendant to the United States Probation Office. The defendant fully

1 understands and agrees to cooperate fully with the United States Probation Office in  
2 providing all information requested by the probation officer.

3 Effect on Other Proceedings

4 I further understand that if I violate any of the conditions of my supervised release,  
5 my supervised release may be revoked. Upon such revocation, notwithstanding any other  
6 provision of this agreement, I may be required to serve a term of imprisonment or my  
7 sentence may otherwise be altered.

8 WAIVER OF DEFENDANT'S RIGHTS

9 I have read each of the provisions of the entire plea agreement with the assistance  
10 of counsel and understand its provisions. I have discussed the case and my constitutional  
11 and other rights with my attorney. I understand that by entering my plea of guilty I will be  
12 giving up my right to plead not guilty; to trial by jury; to confront, cross-examine, and  
13 compel the attendance of witnesses; to present evidence in my defense; to remain silent  
14 and refuse to be a witnesses against myself by asserting my privilege against self-  
15 incrimination; all with the assistance of counsel, to be presumed innocent until proven  
16 guilty beyond a reasonable doubt, and to appeal. This waiver shall not be construed to bar  
17 an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial  
18 misconduct."

19 I agree to enter my guilty plea as indicated above on the terms and conditions set  
20 forth in this agreement.

21 I have been advised by my attorney of the nature of the charge to which I am entering  
22 my guilty plea. I have further been advised by my attorney of the nature and range of the  
23 possible sentence.

24 My guilty plea is not the result of force, threats, assurance or promises other than  
25 the promises contained in this agreement. I agree to the provisions of this agreement as a  
26 voluntary act on my part, rather than at the direction of or because of the recommendation  
27 of any other person, and I agree to be bound according to its provisions.

28



1 I agree that this written plea agreement contains all the terms and conditions of my  
 2 plea and that promises made by anyone (including my attorney) that are not contained  
 3 within this written plea agreement are without force and effect and are null and void.

4 I am satisfied that my defense attorney has represented me in a competent manner.

5 I am not now on or under the influence of any drug, medication, liquor, or other  
 6 intoxicant or depressant, which would impair my ability to fully understand the terms and  
 7 conditions of this plea agreement.

#### 8 FACTUAL BASIS AND SENTENCING FACTOR

9 I agree that the following facts accurately describe my conduct in connection with  
 10 the offense to which I am pleading guilty and that if this matter were to proceed to trial the  
 11 government could prove these facts beyond a reasonable doubt:

12 In the early morning hours of January 19, 2022 in the District of Arizona  
 13 (Sonoita), United States Border Patrol Agents (BPA) at the SR-83 checkpoint  
 14 encountered the defendants. Hale was driving the RV in question.  
 15 TACKETT was in the back of the RV where 13 undocumented aliens were  
 16 later discovered, including three juveniles. Two females were found lying  
 under the hydraulic bed sweating profusely. Three people were found inside  
 the bathroom with Hale's uncle, Defendant TACKETT. Three of the  
 noncitizens were identified as Miriam Yaneth Sillas-Salazar, Fatima De  
 Jesus Figueroa-Gomez and Ramon Mata-Miranda.

17 Records checks revealed that Miriam Yaneth Sillas-Salazar, Fatima De Jesus  
 18 Figueroa-Gomez and Ramon Mata-Miranda did not have the proper  
 19 immigration documentation to enter or remain in the U.S. legally. Sillas was  
 previously removed from the U.S. on December 17, 2003. Figueroa and Mata  
 were identified as material witnesses.

20 Mata said that he had arranged to be smuggled into the US for money. Mata  
 21 and Figueroa admitted crossing the U.S. border illegally. Figueroa said that  
 22 she was picked up by a load vehicle and then taken to a stash house with  
 about 13 other people inside the house. After a few hours in the stash house,  
 23 all 13 people loaded into an RV. Mata said that the RV was occupied by two  
 men who primarily spoke English. Mata said that the younger man possibly  
 24 in his thirties and balding, instructed them to enter the rear room and hide in  
 the back and under a bed. Figueroa said that she saw an older male  
 (TACKETT) with an oxygen tank and a mask. Figueroa said that she was  
 25 inside the bathroom with two other people until the man with the oxygen tank  
 came in and sent them to the back of the RV.

26 TACKETT and Hale knowingly transported said undocumented noncitizens  
 27 further into the United States for financial gain.

28 I have read this agreement or it has been read to me in Spanish, and I have carefully

1 reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it.

2 Date: 9/12/22

3   
 4 Brian Tackett  
 Defendant

5 DEFENSE ATTORNEY'S APPROVAL

6 I have discussed this case and the plea agreement with my client in detail and have  
 7 advised the defendant of all matters within the scope of Rule 11, Fed. R. Crim. P., the  
 8 constitutional and other rights of an accused, the factual basis for and the nature of the  
 9 offense to which the guilty plea will be entered, possible defenses, and the consequences  
 10 of the guilty plea, including the defendant's waiver of the right to appeal. No assurances,  
 11 promises, or representations have been given to me or to the defendant by the government  
 12 or by any of its representatives which are not contained in this written agreement. I concur  
 13 in the entry of the plea as indicated above and on the terms and conditions set forth in this  
 14 agreement as in the best interests of my client. I agree to make a bona fide effort to ensure  
 15 the guilty plea is entered in accordance with the requirements of Rule 11, Fed. R. Crim. P.

16 Date: 9/12/22

17   
 18 Adam Richard Dippel, Esq.  
 Attorney for Defendant

19 GOVERNMENT'S APPROVAL

20 I have reviewed this matter and the plea agreement. I agree on behalf of the United  
 21 States that the terms and conditions set forth are appropriate and are in the best interests of  
 22 justice.

23 GARY M. RESTAINO  
 24 United States Attorney  
 District of Arizona

25 GERARD SCHMIT

Digitally signed by GERARD SCHMIT  
 Date: 2022.09.01 15:19:08 -07'00'

26 Date: \_\_\_\_\_

27 MICAH SCHMIT  
 Assistant U.S. Attorney